



State of Idaho

DEPARTMENT OF WATER RESOURCES

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SOUTHERN REGION

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Director

July 31, 2003

RECEIVED

AUG - 5 2003

Department of Water Resources

Lee Peterson
Watermaster District 37 & 37M
PO Box P
Shoshone, ID 83352

Lynn Harmon, Manager
BWCC and AFRD#2
PO Box C
Shoshone, ID 83352

SUBJECT: Delivery of "shares" in Big and Little Wood Rivers

Dear Lee and Lynn:

Thank you both and thanks to members of the Big Wood Canal Company Board of Directors, the American Falls Reservoir District No. 2 Board of Directors and Ted Diehl with the North Side Canal Company for meeting with Tim Luke, Carter Fritschle, Steve Clelland and me on July 29th to discuss the issues involving coordination of efforts to manage and regulate the delivery of "Carey Act" water from the natural streams (Little Wood and Big Wood Rivers). This letter is intended to document and clarify the discussions at the meeting and subsequent phone call discussions. I am very encouraged by the meeting that some issues are resolved that have cropped up and the framework of cooperation has been reinforced.

The main purpose of the meeting was to put to rest who's responsibility it is to monitor and regulate diversions along the Big and Little Wood Rivers that include delivery of what you refer to as "Carey Act" water that I understand to be water that is delivered to shareholders in either the Big Wood Canal Co (BWCC), the American Falls Reservoir District No. 2 (AFRD2) or the North Side Canal Co (NSCC). *(This "Carey Act" water will be referred to as "shares" in the remainder of this letter)* Based on statutory authority it is the responsibility of the watermaster of Water District 37 and 37M to regulate all diversions that take water from these natural rivers. Once the watermaster delivers the water into private headgates or community or company canals his responsibility may stop or be limited depending on the situation.

As discussed at the meeting I understand that there exists a few diversions that purport to take "shares" via un-regulated pumps or diversions that have been installed by shareholders without the authorization, knowledge or approval of the BWCC, AFRD2, the watermaster or the department. It is important that these diversions be regulated by the watermaster. These diversions must have adequate control works and measuring devices *(See discussion below for potential domestic waiver of measuring device)* to allow the watermaster to adequately control all the waters flowing in the Big and Little Wood River systems. At the meeting I assumed the watermaster and the BWCC were going to coordinate review of these diversions *(BWCC to supply names and addresses of*

shareholders if known to be diverting from un-regulated pumps) and then the watermaster would contact the diverters to notify them of the need to install control works and measuring devices. I now understand that the watermaster understood that the BWCC would make the initial contact or send out letters of notification since these diversions mainly involve the BWCC shareholders. This inconsistency of understanding precipitated the phone calls I received after the meeting. After our phone conversations I now understand that you both are agreeable to send out a joint letter (*letter to be signed by both of you*) to the diverters notifying them of the necessity of installing control works and measuring devices. I recommend this joint effort and thank you for your cooperation. If after your initial contact the diverter fails to install the required control works and measuring device our office will, if requested, follow up with an order which, if ignored, could result in having the watermaster lock out the diversion and may involve issuance of a Notice of Violation by the department. If you need assistance in drafting language for your initial letter please feel free to contact this office.

As discussed at the meeting I understand there may be a few small pumps or diversions in the rivers that have neither "shares" nor private water rights associated with them. I understand the watermaster will pursue identifying such illegal pumps (*BWCC will notify the watermaster of diversions that fall into this category if known by them or are discovered by them*) and once identified the watermaster will take appropriate action to see that use of these pumps or diversions cease. I understand that in the past the watermaster has enlisted the local sheriff when contacting these offenders and this process has worked well. Our office will assist if necessary to issue Notices of Violation to these offenders, particularly to repeat offenders or users found to be uncooperative.

The documentation of diversions solely diverting "share" water from the rivers was discussed. It is the desire of the department to document said diversions in the SRBA recommendations for all diversions existing at the time of the beginning of the adjudication. It is also the desire of the department to allow for new "share" diversions to be added or changed without going through the formal transfer process of § 42-222 of the Idaho Code. It is the department's understanding that § 42-105 of the Idaho Code allows for conveyance of "share" water down the natural streams and re-diversion as long as the watermaster and the department are kept informed. At the meeting it was agreed that the BWCC would develop a procedure incorporating an application form to document the necessary information for a change or addition of a "share" diversion. I understand the form will provide sufficient detail describing the normal elements of a water use that will allow the watermaster to adequately regulate the diversion. The form shall include but may not be limited to: PD legal, PU legal, Owner, mailing address and phone number, description of proposed control works and measuring device, number of shares to be delivered, a map. (*Please note that the department is looking at this issue and in the future may come up with a short § 42-105 form to fit this situation; however, I do not know of the timeline for such an effort so I suggest you proceed.*) If a shareholder files such an application, it will be reviewed by the BWCC and the watermaster to determine if the proposal meets their standard (*particularly that control works and measuring devices are part of the proposal*). If approved by both, the watermaster would deliver appropriate "share" water to the diversion. The department, once notified, would incorporate this "share" diversion approval in the water right record in the comments section of the electronic record. (*Currently department policy will not allow modification of the water right point of diversion*

element without going through the 42-222 process but again the department is looking at this issue and may come up with some short process) Please note that this procedure cannot be used for privately held water rights (decrees, licenses, or permits).

During the meeting there was a discussion regarding the requirement for installation of control works and measuring devices. As you are aware § 42-701 of the Idaho Code dictates the requirement for said control works and measuring devices. There was no dispute about the need for measurement and control of large diversions; however, questions about the need for expensive measuring devices on small pumps that pump water for lawns, gardens or stock (*which could be considered as domestic uses*) was raised. As discussed at the meeting there has apparently been some past policy for considering some type of waiver in the BWCC system but it has not been consistent between the BWCC and Water District 37 and 37M. As agreed, the BWCC and WD 37-37M would develop consistent bylaws or policies that describe an acceptable waiver of measuring device for small pumps consistent with § 42-701 of the Idaho Code. I do not know what the expectation is regarding regulation of small pumps but it would appear that if there are many of these small pumps it may become burdensome on the watermaster to continuously adjust rates of flow. I would think it reasonable that these pumps are either on or off and that is the only regulation required of the watermaster and you should draft your bylaws accordingly. I recommend that the department review drafts of these bylaws or policies prior to adoption.

Another issue discussed at the meeting was a situation brought up by Ted Diehl of the North Side Canal Company. Apparently during prior drought years there have been times when water from the BWCC storage in Magic Reservoir has ceased yet water from the Snake River through the NSCC system has continued to be conveyed through the Big and Little Wood River system. During these times Ted explained that shareholders in the BWCC have continued to divert depriving NSCC of their ability to deliver to their shareholders lower in the system. Hopefully with implementation of the items addressed above and control by the watermaster of 37 and 37M this injury can be eliminated or kept to a minimum.

Hopefully this letter provides sufficient direction. Thank you again for your cooperation. If you have questions please feel free to contact this office.

Sincerely,



Allen Merritt, PE
Southern Region Manager

CC: Tim Luke, Glen Saxton, Carter Fritschle, Steve Clelland – IDWR State Office
Ted Diehl – NSCC
Craig Hobdey

Summary

- Wm has responsibility of all diversion from nat. stream / rivers
 - Wm shuts off diversions if as pt or other authority, may coord w/ EDWR on ADVS.
- BWCC will identify re-diversions & if they are sanctioned by them
- Allen / EDWR will assist w/ form & help identify the re-diversions. Info needed:
 - Name & Address
 - PWS location
 - # shares, PD sanctioned by BWCC
 - ~~time~~ ^{time} near - device requirements
 - comments

Allen suggested that EDWR could add comments to DB / etc reflecting these changes.

BWCC needs policy / resolutions w/ criteria, as to what / how there would be ^{approved} ~~monitored~~, measured.

BWCC / WD 37 working w/ Brockway on OPSing of all diversions - could use help from EDWR. Should also look @ developing A-0 ^{Acty} ~~pts~~ program & database of diversions.

7-29-03

Mtg @ Big Wood Canal Co. & Lee Peterson
Issue: Big Wood Canal Co shareholders who
have pulled out of canal & installed pumps

South Fork

- Community Ditch (nr. gooding?)
- diverts Carey Act H₂O & Decree water
- users have pulled out of ditch & put pumps
on Little Wood River w/no transfer, mess device
etc. ... these are domestic uses.

BWCC

- if canal share & intake $< 1.5''$, they will
waive mess. device requirement.
- there are a few ~~to~~ by pumps in violation
-
- there are some pumps not in BWCC or Am Falls
& have no RTS at all.

Carey Act Water = Big Wood Canal shares &
~~Am Falls share~~

Some users may have both decreed rts & Carey Act H₂O

Bol Estabrook

Gris Hobdy

Mike Cen

Gre

Adams

PLV Ko

Roberson

Witzler

Frankner

Hemon

and

Deill

Wert

Friches } SRBA
Aellme }

- Domestic

- Illegal Use.
